

EXHIBIT A



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Fee Amt: \$82.00 Page 1 of 14
Scott County Iowa
Rita A. Vargas Recorder

File **2020-00002504**

RCRA



592759

Space Above for Recorder's Use Only

TITLE OF DOCUMENT: Environmental Covenant

RETURN DOCUMENT TO: Hawkeye Yards, LLC
4421 Telegraph Road
Davenport, Iowa 52804

TAXPAYER INFORMATION: Hawkeye Yards, LLC
Davenport, Iowa 52804

GRANTOR: Hawkeye Yards, LLC
Davenport, Iowa 52804

GRANTEE: Hawkeye Yards, LLC
Davenport, Iowa 52804

PREPARER: DeAndré Singletary
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

LEGAL DESCRIPTION: See Exhibit A

EXHIBIT A

ENVIRONMENTAL COVENANT

This Environmental Covenant (Covenant) is entered into by and between Owner, **Hawkeye Yards LLC** as Grantor, **Hawkeye Yards LLC** as Grantee/Holder, and the **U.S. Environmental Protection Agency** (EPA) as Agency, pursuant to the Iowa Uniform Environmental Covenants Act, IOWA CODE §§ 455I.1 – 455I.12, for the purpose of subjecting the property described below to the activity and use limitations set forth herein.

RECITALS

1. **Affected Property.** Grantor is fee title owner of property located at 743 Schmidt Road, Davenport, Scott County, Iowa 52802 (Property). The Property is legally described in Exhibit A and generally depicted on Exhibit B. The Property is identified by the Scott County Iowa Recorder as parcel number K0047-04A.
2. **Agency Action.** The Property is the subject of an environmental response project pursuant to the Resource Conservation and Recovery Act (RCRA). The selected environmental response project is documented in the Final Decision and Response to Comments approved on March 21, 2019 by the EPA. The administrative record for this project is available at the EPA's regional office at 11201 Renner Boulevard, Lenexa, Kansas 66219.
3. **Risk Management and Institutional Controls.** Past operations on the Property resulted in contamination of soil and groundwater. Those operations included a drum reconditioning business that operated from the 1960s through the early 2000s. A prior owner of the Property conducted an "environmental response project," as defined in section 455I.2.5 of the Act at the Property pursuant to a judgment in *United States of America v. R.V. Hopkins, Incorporated*, Case No. 3-99-CV-60005 (S.D. Iowa Nov. 3, 2000) and a site closure plan. The environmental response project included the removal of tanks, drums, and waste piles as well as the placement of a soil cap on portions of the property with elevated contaminant levels in surface soils.

Following the completion of this environmental response project, contamination remains at the Property which may present an unreasonable risk to public health and the environment if certain activities occur on the Property. As such, this Covenant is necessary to manage the risk of future exposure by limiting specified activities at the Property and establishing affirmative obligations.

4. **Reopening.** The signatories acknowledge that the failure of the activity and use limitations imposed on the Property hereby to serve their intended purpose, including the prevention of exposure to contamination, could result in the EPA reopening its review and regulation of the contaminant condition on the Property.
5. **Identity of Grantor and Holder.**
GRANTOR: Hawkeye Yards LLC
HOLDER: Hawkeye Yards LLC
AGENCY: U.S. Environmental Protection Agency Region 7

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6. **Representations and Warranties.** Grantor warrants to the other signatories to this Covenant that Grantor:
 - a. is the sole fee title owner of the Property;
 - b. holds sufficient fee title to the Property to grant the rights and interests described in this Covenant free of any conflicting legal and equitable claims; and
7. **Running with the Land.** This Covenant is perpetual and runs with the Property, as provided in section 455I.9 of the Act, until modified or terminated. This Covenant is binding on Grantor and all successors in interest, assigns, and transferees acquiring or owning any right, title, lien or interest in the Property and their heirs, successors, assigns, grantees, executors, administrators and devisees. The term "transferee," as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders, and/or lessees (collectively, Transferee).
8. **Activity and Use Limitations and Terms.** The Property is subject to the following activity and use limitations:
 - a. **No Residential Land Use** - Based on reports on file at the EPA's offices in Lenexa, Kansas, the Property currently meets the EPA's and Iowa Department of Natural Resource's (IDNR) standards for non-residential use. Therefore, contaminants of concern remaining at the Property do not pose a significant current or future risk to human health or the environment so long as the following restrictions remain in place. The Property shall **not** be used for residential purposes, which for purposes of this Covenant include, but are not limited to: single family homes, duplexes, multi-plexes, apartments, condominiums, schools, retirement or senior/child care facilities, or any land use where persons can be expected to reside.
 - b. **Disturbance of Soil** - Based on reports on file at the EPA's offices in Lenexa, Kansas the contaminants of concern remaining at the Property exceed the EPA's and IDNR's standards for non-residential use and construction worker exposure, but do not pose a significant current or future risk to human health or the environment with respect to non-residential uses of the Property so long as the soil is not disturbed such that exposure may result. Therefore, soil at the Property shall not be excavated or otherwise disturbed in any manner without the prior written approval of the EPA or IDNR. If an Owner/Transferee desires to disturb soil at the Property, then such Owner/Transferee shall submit a notification to the EPA or IDNR at least 30 days before the soil disturbance activities are scheduled to begin. Based on the potential hazards associated with the soil disturbance activities, the EPA or IDNR may deny the request to disturb the soils or may require specific protective or remedial actions before allowing such soil disturbance activities to occur. Contaminated soil may be disturbed if necessary, during an emergency (such as water or gas main break, fire, explosion or natural disaster), in which case the Owner/Transferee shall ensure that notification is provided to the EPA or IDNR orally or in writing as soon as practicable, but no later than 48 hours after the disturbance begins. Any contaminated soil disturbed as part of an emergency response action must be returned to its original location and depth, or properly characterized, managed and disposed of, in accordance

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with all applicable local, state, and federal requirements. Within 30 days after such emergency has been abated, the Owner/Transferee shall provide a written report to the EPA or IDNR describing such emergency and any response actions.

- c. **Construction Worker Notice** - In the event that construction or excavation work is to be performed that may expose workers to contaminated soil on the Property, Owner/Transferee shall ensure that actual notice is provided in advance, both orally and in writing, to any person or entity performing any work that will or is likely to result in exposure to such soil, so that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations. Such notice shall include, but not be limited to, providing a copy of this Covenant to any individuals conducting or otherwise responsible for the work. Owner/Transferee shall maintain copies of any such written notice for a period of at least three years and shall provide copies of such records to the EPA or IDNR upon request.
9. **Compliance Reporting.** One year from the effective date of this Environmental Covenant, and on an annual basis thereafter until such time as this Environmental Covenant is terminated, the then-current fee simple owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. Any signatory to this Covenant shall notify the EPA and IDNR as soon as possible of conditions which would constitute a breach of the activity and use limitations described above if they have actual knowledge of these conditions or would reasonably be deemed to have knowledge within the normal course of administration of their property interest.
10. **Notice to Lessees.** Grantor, any holder with a property interest sufficient to grant a lease of the Property, and any transferee shall incorporate the activity and use limitations of this Covenant either in full or by reference, in any lease, license, or other instrument granting a right to possession of the Property.
11. **Access to Property.** Access to the Property is granted to EPA and IDNR and their authorized representatives for the purpose of implementing, monitoring, and/or enforcing this Covenant. EPA and/or IDNR agree to provide the then current owner of the Property reasonable notice prior to access. Nothing herein shall be deemed to limit or otherwise affect EPA's or IDNR's rights of entry and access under applicable law.
12. **Groundwater Hazard Statement Notice.** Iowa Code section 558.69 requires the submission of a groundwater hazard statement and disclosure if "hazardous waste" exists on the Property as defined in Iowa Code subsections 455B.411(3), 455B.412(2) or section 455B.464 or if Agency determines that solid waste exists on the Property that is potentially hazardous. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with IDNR rules. The signatories and all subsequent transferees required to submit a groundwater hazard statement under Iowa Code section 558.69 shall make reference to this environmental covenant in substantially the following form:

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a copy of this Covenant to any individuals conducting or otherwise responsible for the work. Owner/Transferee shall maintain copies of any such written notice for a period of at least three years and shall provide copies of such records to the EPA or IDNR upon request.

13. **Modification and Termination.** Any modification or termination of this Covenant shall comply with Iowa Code chapter 455I and applicable IDNR administrative rules. This Covenant may be modified or terminated by written consent of Agency, the then current fee simple title owner, and all original signatories (unless exempted under the provisions of Iowa Code section 455I.10(1)c in accordance with and subject to the provisions of Iowa Code section 455I.10). The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any modification or termination of this Covenant shall be in accordance with Iowa Code section 455I.9 and such additional terms as specified in this covenant.
14. **Enforcement.** This Covenant may be enforced by the EPA in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Iowa Code section 455I.11. Additionally, the signatories to this Covenant expressly grant to IDNR the power to enforce this Covenant.
15. **Severability.** If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
16. **Governing Law.** This Covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.
17. **Recordation.** Within 30 days after the date of the final required signature upon this Covenant or any amendment or termination thereof, Grantor or transferee shall record this Covenant with the appropriate recorder of deeds for each county in which any portion of the Property is situated. Owner or transferee shall be responsible for any costs associated with recording this Covenant.
18. **Effective Date.** The effective date of this Covenant shall be the date upon which the fully-executed Covenant has been recorded with the office of the recorder of Scott County.
19. **Notice.** Any notice, document, or other item required by this Covenant to be given to another party hereto shall be sent to:

 If to Grantor:
 Hawkeye Yards LLC
 4421 Telegraph Road
 Davenport, Iowa 52804

 If to Holder:
 Hawkeye Yards LLC
 4421 Telegraph Road
 Davenport, Iowa 52804

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THE INTEREST CONVEYED IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED 1-21-2020 RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE SCOTT COUNTY RECORDER ON 1-23-2020 IN Scott County, IA. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. **No Residential Land Use** - Based on reports on file at the EPA's offices in Lenexa, Kansas, the Property currently meets the EPA's and Iowa Department of Natural Resources (IDNR) standards for non-residential use. Therefore, contaminants of concern remaining at the Property do not pose a significant current or future risk to human health or the environment so long as the following restrictions remain in place. The Property shall not be used for residential purposes, which for purposes of this Covenant include, but are not limited to: single family homes, duplexes, multi-plexes, apartments, condominiums, schools, retirement or senior/child care facilities, or any land use where persons can be expected to reside.
- b. **Disturbance of Soil** - Based on reports on file at the EPA's offices in Lenexa, Kansas the contaminants of concern remaining at the Property exceed the EPA's and IDNR's standards for non-residential use and construction worker exposure, but do not pose a significant current or future risk to human health or the environment with respect to non-residential uses of the Property so long as the soil is not disturbed such that exposure may result. Therefore, soil at the Property shall not be excavated or otherwise disturbed in any manner without the prior written approval of the EPA or IDNR. If an Owner/Transferee desires to disturb soil at the Property, then such Owner/Transferee shall submit a notification to the EPA or IDNR at least 30 days before the soil disturbance activities are scheduled to begin. Based on the potential hazards associated with the soil disturbance activities, the EPA or IDNR may deny the request to disturb the soils or may require specific protective or remedial actions before allowing such soil disturbance activities to occur. Contaminated soil may be disturbed if necessary, during an emergency (such as water or gas main break, fire, explosion or natural disaster), in which case the Owner/Transferee shall ensure that notification is provided to the EPA or IDNR orally or in writing as soon as practicable, but no later than 48 hours after the disturbance begins. Any contaminated soil disturbed as part of an emergency response action must be returned to its original location and depth, or properly characterized, managed and disposed of, in accordance with all applicable local, state, and federal requirements. Within 30 days after such emergency has been abated, the Owner/Transferee shall provide a written report to the EPA or IDNR describing such emergency and any response actions.
- c. **Construction Worker Notice** - In the event that construction or excavation work is to be performed that may expose workers to contaminated soil on the Property, Owner/Transferee shall ensure that actual notice is provided in advance, both orally and in writing, to any person or entity performing any work that will or is likely to result in exposure to such soil, so that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations. Such notice shall include, but not be limited to, providing

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ACKNOWLEDGMENTS

The undersigned signatories represent and certify that they are authorized to execute this Covenant on behalf of their respective parties.

IT IS SO AGREED:

FOR GRANTOR HAWKEYE YARDS LLC, an Iowa corporation

By: Marc Harrison
Name (print): Marc Harrison
Title: Owner
Address: 743 Schmidt Rd
Davenport IA 52802

Date: January 8, 2020

STATE OF Iowa)
COUNTY OF Scott)

On this 8 day of January, 2020, before me a Notary Public in and for said state, personally appeared Marc Harrison, the Owner of Hawkeye Yards LLC, a Iowa corporation, known to me to be the person who executed the within Covenant on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.



JODI CHASE
Commission Number 729136
My Commission Expires
9-7-2022

Notary Public

Jodi Chase

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If to EPA:

Director, Land, Chemical & Redevelopment Division
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

If to IDNR:

Iowa Department of Natural Resources
Contaminated Sites Section Supervisor
502 East 9th Street
Des Moines, Iowa 50319

20. **Notice of Change in Ownership.** Grantor and any holder of any interest in the Property and any subsequent transferee shall reference and incorporate the terms of this Covenant into any subsequent instrument which conveys a possessory interest in the Property. Grantor/transferee shall notify Holder and the EPA within 10 days following each conveyance of an interest in the Property, or any portion thereof.

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FOR HOLDER HAWKEYE YARDS LLC, an Iowa corporation

By: Marc Harrison
Name (print): Marc Harrison
Title: Owner
Address: 743 Schmidt Rd
Davenport IA 52804

Date: January 8, 2020

STATE OF Iowa

COUNTY OF Scott

On this 8 day of January, 2020, before me a Notary Public in and for said state, personally appeared Marc Harrison, the Owner of Hawkeye Yards LLC, a Iowa corporation, known to me to be the person who executed the within Covenant on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.



JODI CHASE
Commission Number 729136
My Commission Expires
9-7-2022

Notary Public

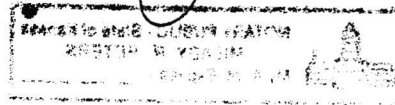


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FOR EPA

By:

DeAndré Singletary
DeAndré Singletary
Director

Date:

1/16/20

Land, Chemical & Redevelopment Division
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

STATE OF KANSAS)

COUNTY OF JOHNSON)

On this 16th day of January, 2020, before me a Notary Public in and for said state, personally appeared DeAndré Singletary, Director of the EPA Region 7's Land, Chemical & Redevelopment Division (or his designee), known to me to be the person who executed the within Environmental Covenant on behalf of said Agency and acknowledged to me that he executed the same for the purposes therein stated.

Milady F. Peters
Notary Public



EXHIBIT A

Parcel K0047-04A

Part of the Southwest Quarter of Section 34, Township 78 North, Range 3 East of the 5th P. M., in the City of Davenport, Iowa, being more particularly described as follows: Commencing at the northwest corner of the Southwest Quarter of said Section 34; thence South 26 314° East 338.59 feet; thence North 64° East 761 feet; thence South 29° East 1550.64 feet to the northeast corner of Mangels' Sublot No. 1; thence South 62 112° West 206.25 feet; thence South 29° East 436.4 feet; thence South 62 112° West 271 feet; thence North 9° 14' West 142.5 feet to the POINT OF BEGINNING; thence South 83° 59' West 463.62 feet more or less to Schmidt Road; thence North 6° 0' West 445.43 feet to the south boundary line of the Chicago, Rock Island & Pacific Railway Company's land; thence Easterly on the south boundary line of said Railway Company's land 506.25 feet; thence South 9° 14' East to the place of beginning. Except tract conveyed by deed dated June 20, 1968 and recorded in Book 317 of Deeds, page 74 in the Office of the Recorder of Scott County, Iowa.

Together with a perpetual easement over and along the following described real estate adjacent to and South of the hereinabove described tract: Commencing at the place of beginning of the above described tract; thence South 83° 59' West 463.62 feet more or less to Schmidt Road; thence Southerly along the easterly side of Schmidt Road 5 feet; thence North 83° 59' East 463.63 feet to a point that is 5 feet South 9° 14' West of the place of beginning; thence North 9° 14' East 5 feet to the place of beginning.

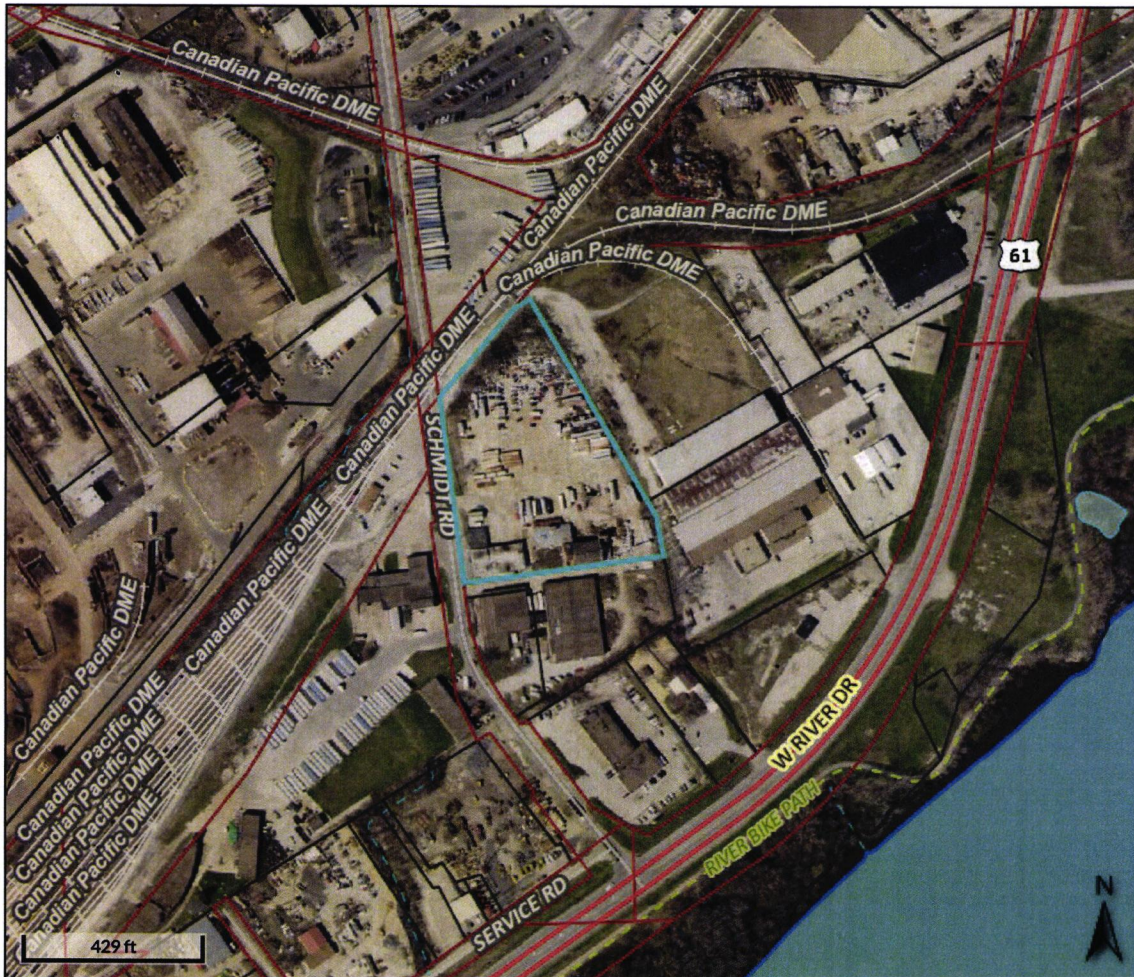
Together with a driveway easement for ingress and egress retained over the Northerly 35 feet of the adjoining property to the South extending from Schmidt Road in a northeasterly direction approximately 463.62 feet as described in the Quit Claim Deed recorded September 8, 2015 as Document 2015-23672 in the office of the Recorder of Scott County, Iowa.

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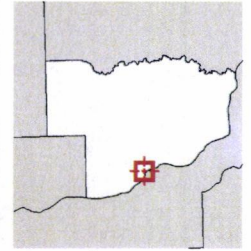
Figures



Scott County / City of Davenport, Iowa



Overview



Legend

- Parcels
- Parcel Point
- Political Township
- All Roads
 - Interstate
 - US Highway
 - State Highway
 - County Route
 - Major road
 - Local roads
 - Ramp
 - Alleyway/Access Road
 - Bike/Pedestrian Trail
 - Driveway
- Rights of Way
- Railroad
- County Boundary
- Major Rivers and Streams
 - River Centerline
 - River Boundary
 - Major Stream
- Minor Streams, Other
 - Minor Stream
 - Small Lake/Pond
 - Drainageways, etc
 - Island
- Major Rivers and Lake
 - Lake
 - Major Stream
 - River
 - Minor Lakes and Ponds

Parcel ID K0047-04A
Sec/Twp/Rng 34-78-03
Property Address 743 SCHMIDT RD

Alternate ID K14033
Class C
Acreage n/a

Owner Address HAWKEYE YARDS LLC
4421 TELEGRAPH RD
DAVENPORT IA 52804

DAVENPORT

Graphic Acres 4.88

District

DAD

Brief Tax Description

PT OF SW/4 SEC 34-78-3 COM AT NWCOR SW/4 SEC 34-S 263/4D E 338.58'-N 64DE 761'-S 29D E1550.64' TO NE
CORMENGELS' SUBLOT 1-S

(Note: Not to be used on legal documents)

Date created: 12/12/2019